1949

File No. O. Electricity (Supply) 49

Legal **DEPARTMENT**

A. BRANCH

Subject:—

Opinions under the Electricity (Supply) Act 1948

P 7 13/F)

File No. O. Electricity (Supply) 49

Std. Sectt. Slip 24-B

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P.S./M.614

Submitted with reference to P.W.D. note dated 10-3-49 at pages 81-82 ante.

2. The question for consideration is whether in view of the provisions of section 57(1) of the Electricity (supply) Act, 1948 (LIV of 1948) a licensee, other than a local authority, can levy a surcharge under the Bombay Electricity (Surcharge) Act, 1946 (Bom. XIX of 1946), from the date of the commencement of the licensee's year of account succeeding that in which the Electricity (Supply) Act came into force till the 30th Sept. 1949 on which date the Bombay Electricity (Surcharge) Act is due to expire.

3. It is true that in view of the provisions of section 57(1) of the Electricity (Supply) Act, 1948, which came into force on the 10th Sept. 1948, the provisions of the Bombay Electricity (Surcharge) Act, 1946 in their application to any licensee, other than a local authority, would be void with effect from the date of the commencement of the licensee's next year of account after 10th Sept. 1948, but only to the extent to which the latter provisions are inconsistent with the former provisions. At present the levy of of surcharge by a licensee at the rate fixed by Govt. is covered by section 4 of the Bombay Electricity (Surcharge) Act. The rate fixed by Govt. is liable to be revised under section3(6) of the said Act. As long as the licensee whose next year of account has commenced complies with the provisions of para I and other provisions of the Sixth Schedule to the Electricity

(Supply)

P.S.M. 614.

(Supply) Act, 1948, it does not appear that the levy of the surcharge by him under the Bombay Electricity (Surcharge) Act, 1946, at the rate already fixed or deemed to be fixed by Govt. would be illegal. Only the rate of surcharge already fixed cannot now be revised under section 3(6) of the said Act as Section 57(2) of the Electricity (Supply) Act, 1948, provides a different procedure for revision of rates by the appointment of a rating committee. Moreover section 57of the Electricity (Supply) Act does not apply if the licensee is a local authority.

Sd/-
12-8-49.
S.A.S.

Sub-section(1) of section 57 of the Electricity (Supply) Act, 1948, provides that the provisions of the Sixth Schedule and the table appended to the Seventh Schedule shall be deemed to be incorporated in the license of every licensee, not being a local authority, from the date of the commencement of the licensee's next succeeding year of account and from such date the licensee shall comply therewith accordingly and any provisions of such licence or the Indian Electricity Act, 1910, or any other law, agreemnt or instrument applicable to the licen see shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent to the provisions of the section and the said Schedule and table. Para I of the Sixth Schedule requires the licensee to so adjust his rates for the supply of electricity by periodical revision that hisclear profit in any year shall not as far as possible exceed the amount of

of reasonable return. The proviso to the paragraph lays down that a licensee shall not be considered to have failed so to adjust his rates if the clear profit in any year of account has not exceeded the amount of reasonable...

AS.M.614

Legal Department.

Sub-section(1) of section 57 of the Electricity (Supply) Act, 1948, provides that the provisions of the Sixth Schedule and the table appended to the Seventh Schedule shallbe deemed to be incorporated in the licence of every licensee, not bein g a local authority, from the date of the commencement of the licensee's next succedding year of account and from such date the licensee shall comply therewith accordingly and any provisions of such licence or the Indian Electricity Act, 1910, or any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent to the provisions of the section and the said Schedule and table. Paral of the Sixth Schedule requires the licensee to so adjust his rates for the supply of electricity by periodical revision that his clear profit in any year shallnot as far as possible exceed the amount of reasonable return. The proviso to that paragraph lays down that a licensee shall not be considered to have filed so to adjust his rates if the clear profit in any year of account has not exceeded the amount of reasonable return by more than 30 per cent. of the amount of resonable return. The expression "year of account" has been defined in the Act as meaning in relation to a licensee his financial year. Similarly the expressions "clear profit" and "reasonable return" have been defined in the Sixth Schedule. The

The question whether in any year the clear profit earned by the licensee has exceeded the amount of reasonable return would be in each case a question of fact. If the profits which a licensee gets by including in his charges the surcharge fixed under the Bombay Electricity (Surcharges) Act, 1946, do not exceed the amount of reasonable return to which he is entitled under the Electricity (Supply) Act, 1948, If, however, these profits exceed the amount of reasonable return, his case would be governed by para. 2 of the Sixth Schedule and the balance of excess shall be utilised as laid down in that para. There would be no question of refunding the amount of surcharges as suggested in the P.W.D. note at pages 81-82 ante.

Sd/-

30-5

Additional Secretary to Government.

U.R. to P.W.D. No. 6012, dated the 30th May 1949.

P.S.M. 6-4-56.

R.I.No. 11384 dt. 26-7-4

Submitted with reference to P.W.D. note dated 21-7-49 at pages 85-86 ante.

2. With reference to U.R.No. 6012 dated 30th May 1949 at pages 83-84 ante, the P.W.D. has invited attention to R.L.A.'s opinions No. 4043 dated 13th April 194 at P. 241 of P.W.D. File 7013/36-and No. 3430 dated 30 March 1949 at p. 21 of P.W.D. file 1438-36 and has requested this Department to confirm the presumption made in para 2 at p. 85 ante.

3. The presumption made in para 2 of P.W.D. note at p.85 ante is correct. Subject to the observations made in the concluding portion of this Department U.R. No. 6012 dated 30-5-49 at pages 83-84 ante, there would be no legal objectionfor a licensee to continue to levy the surcharge already fixed by Government and levied by him under the Bombay Electricity (Surcharge) Act,1946 (Bom.XIX of 1946) ~~xxxxx~~ even after the coming into operation of the Electricity (Supply) Act, 1948 (LIV of 194 until Bombay Act XIX of 1946 expires i.e. upto 30th September 1949. But after the coming into operation of Act LIV of 1948, if a licensee finds that he is not getting a reasonable return with his existing charges for the supply of electricity, it willl not be possible for him to apply under Bombay Act XIX of 1946 for fixing a rate of surcharge ~~xx xx xx~~ for him and to levy the surcharge or to ask for increase in the rate of surcharge already fixed for him. He will have to approach Govt. under section 57(2)(a) of Act LIV of 1948 for the appointment of a rating committee. R.L.A.'s opinions No. 4043 dated 13-4

dated 13-4-49 and No. 3430 dated 30-3-49 referred to by the P.W.D. are applicable only to cases where surcharge was not levied before the coming into operationof Act LIV of 1948.

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9/9/49.

I think the Department has overlooked the important words in Section 67 of the Electricity Supply Act 1947, namely, "in so far as they are inconsistent with the provisions of the section; the said Schedule and table". If the levy of the surcharge is not inconsistent with the aforsaid provisions, it can be perfectly valid. Before the point is further considered I should like to see the papers underlying R.L.A.'s opinions refered to.

Sd/-
14-9

Please see slips Y and J.

Sd/-
16-9.

P.S.M. 6-4.

Legal Department.

Under sub-section (1) of section 57 of the Electricity (Supply) Act, 1948, the provisions of the sixth Schedule and the table appended to the Seventh Schedule shallbe deemed to be incorporated in thelicence not being a local authority, from the date of the commencement of the licensee's next succeeding year of account, and from such date the licensee shall comply therewith accordingly and any provisions of such licence or ofthe Indian Electricity Act, 1910 (IX of 1910) or any other law, agreement or instrument applicable to the licensee, be void and of no effect"in sofar as they are inconsistent with the provisions of this section and the said Schedule and Table". The words "in so far as they are inconsistent with the provisions of this sectio and the said Schedule and Table", in this section are important. Any other law referred to in section 57 will no doubt include the Bombay Electricity (Surcharge) Act 1946, but that law will be void and of no effect only if the provisions contained therein are inconsistent with the provisions of section 57 of the Electricity (Supply) Act, 1948 and the 6th Schedule and Table appended to the 7th Schedule. The provisions of section 57 and the 6th Schedule and the table appended to the 7th Schedule do not appear to contain anything by which the levy of surcharge under the Bombay Electricity (Surcharge)Act, 1946 would in itself be illegal so long as that Act is in for But as pointed out in the last opinion No. 6012 dated the 30th May 1949 if the profits which a licensee gets by including in his charges the surcharge fixed under

fixed under the Bombay Act exceed the amount of reasonable return his case willbe governed by paragraph 2 of the 6th Schedule and the balance of excess willhave to be utilised as laid down in that paragraph. There is thus no question of refunding the amount of surcharge as suggested in the P.W.D. note.

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17/9

Additional Secretary to Government

U.R. to P.W.D. (Poona), No. 69-L dated 17th September 1949.

P.S.M. 6/4.

L.D.R.I. No. 20407/49

Submitted.

Please see P.W.D. note at page 1 & 2 ante. As stated therein, the provincial Govt. has decided to constitute a Rating Committee under the provisions of section 57 of the Electricity (Supply) Act, Xxxx 1948. The Electricity (Supply) Act does not seem to contain specific provision for payment of remuneration a and travelling allowance to the members of the Rating Committee. The question raised for consideration of the R.L.A. is whether the view that section 73(1) of the Act however authorises xx Provl. Govt. to make rules to give effect to the provisions of the Act and Govt. can perhaps under this provision incorporate directions in the rules for the payment of remuneration to the members of the Rating Committee is correct.

Xxx Clause (a) to sub-section 2 of section 57 provides: "The Board or where no Board is constituted under this Act the Provl. Govt., may, if it is satisfied that the licensee has failed to comply with any provision of the said Schedule, and shall when requested so to do by the licensees, constitute a rating committee to examine the licensee's charges for the supply of Electricity and to recommend thereon to the Provl. Govt." So it seems the Rating Committee in the present case has been constituted under the aforesaid provision to examine the charges for the supply of electricity by the Matheran Electric Supply Co. It has been informally ascertained from the office of the Electrical Engineer that no Board has been constituted and no rules have been framed by the Provl. Govt. under the Act. As the Board is not xxx constituted the Provl. Govt. should constitute a Rating Committee as provided in sub-section 4 and 5 of section 57.

The Provl. Govt. has power to make rules under sec. 78 which provides "(1) The Provl. Govt. may after previous publication, by notification in the Official Gazette make rules to give effect to the provisions of this Act". Under sub-section 2 of section 78, the Provl. Govt. can make rules for the matters provided in clauses (a) to (h). Clause (a) provides for making of a rule with regard to the remuneration, allowances and conditions of service of members of the Board. As under Sec. 78 (2) (a) the Provl. Govt. can make rules providing for the remuneration allowance and conditions of service of members of the Board if established, it can incorporate directions in rules providing for remuneration and travelling allowances to the members of the Rating Committee under Sec 78(1) of the Act.

The view taken in the P.W.D. note is correct.

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AAS.

In pursuance of provisions of sub-sect.(3) of sect-1 of the Electricity (Supply) Act, 1948, Sect. 1,3,4,57,58 and 77 and the Sixth Schedule and the Table appended to the Seventh Schedule of the Act have come into force. Under sub-sect.(4), however, the remaining provisions of the Act shall come into force in a Province on such date not later than two years from the coming into force of the Sections etc. mentioned in sub-sect. (3), as the Provl. Govt. may appoint by a notification. Under Sect. 5(1), the Provl. Govt. shall

shall, as soon as may be after the issue of a notification under sect.1(4) constitute by notification in the Official Gazette, a Provincial Electricity Board. No such Board is constituted, as nonotification under sect.1(4) applying the remining previsions of the Act, including Sect. 5 has been issued.

Under cl. (a) of sub-sect (2) of sect. 57, the Board, or where no Board is constituted.

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The Electricity Supply Act 1948

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When power is granted by statute everything indispensable to its exercise is impliedly granted also. (See Maxwell p. 310). Power to appoint a Rating Committee under section 57 of the Electricity (Supply) Act, 1948 implies also power to grant remuneration and allowances to the members of such Committee. It would be possible to regulate the grant of remuneration and allowances to the members of such Committee by rules framed under section 78 has not yet However it is presumed that sect. 78 has not yet come into force. (See section 1(iii) of the Act),. If so no rules can be framed at present under that section for the purpose. It would however be competent for Government to fix by an executive order remuneration and allowances to the members of such Committee pending the framing of rules under section 78. To avoid any further conflict between such fixation and the provisions of rules to be framed hereafter under section 78 it is desirable that Government should in the first instance frame draft rules provisionally under that section (This is permissible under section 22 of the General Clauses Act) and fix the remuneration and allowances consistent with those draft rules.

Sd/-
17/12

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 14733, dated the 19th December 1949.

P.S.M. 6/4.